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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/192,579	11/17/1998	FRANCO MENOZZI	960-34	9973

7590 10/10/2002

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EXAMINER

SWARTZ, RODNEY P

ART UNIT

PAPER NUMBER

1645

DATE MAILED: 10/10/2002

df

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/192,579	MENOZZI ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Rodney P. Swartz, Ph.D.	1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 2August2002.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 56-70 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 56-70 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

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### **DETAILED ACTION**

1. Applicants' Response to Office Action, received 16July2002, paper#22, is acknowledged. Claims 71-81 have been canceled without prejudice. Claims 56-64, 66, 67, 69, and 70 have been amended.
2. Applicants' Supplemental Response to Office Action, received 2August2002, paper#23, is acknowledged.
3. Claims 56-70 are pending and under consideration.

### **Rejections Withdrawn**

4. The objection to claim 57 is withdrawn in light of the claim amendment.
5. The objection to claims 59 and 62 is withdrawn in light of the amendment of the claims.
6. The rejection of claims 56-59 and 65 under 35 U.S.C. 101, non-statutory subject matter, is withdrawn in light of the amendment of the claims.
7. The rejection of claims 59 and 62 under 35 U.S.C. 112, second paragraph, as being indefinite, is withdrawn in light of the amendment of the claims.
8. The rejection of claims 56-67 under 35 U.S.C. 112, second paragraph, as being indefinite, is withdrawn in light of the claim amendments.

### **Rejections Maintained**

9. The rejection of claims 56-67 under 35 U.S.C. 102(b) as being anticipated by Menozzi et al (*Abstracts of the General Meeting of the ASM*, 95(0):193, abstract B-159) is maintained for reasons of record.

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Applicants argue that the Menozzi et al is not prior art under 35 U.S.C. 102(b) because the publication of the reference was presented at a Congress of May 21-25, 1995, but the priority date of the instant application is May 17, 1996.

The examiner has considered applicants' argument, but does not find it persuasive. While the meeting took place May 21-25, according to the American Society of Microbiologists publication department, the publication of the abstract was available to the public as of mid-April 1995, at least 30 days before the instant application's priority date. Therefore, the abstract is prior art under 35 U.S.C. 102(b).

10. The rejection of claims 56-67 under 35 U.S.C. 112, second paragraph, as being indefinite, is maintained.

Claims 68-70 are dependent from rejected claims.

### Conclusion

11. Claims 56-70 remain rejected.

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR

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1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney P. Swartz, Ph.D., whose telephone number is (703) 308-4244. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM EST.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F. Smith, can be reached on (703)308-3909. The facsimile telephone number for the Art Unit Group is (703)308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703)308-0196.

*Rodney P. Swartz*  
RODNEY P SWARTZ, PH.D  
PRIMARY EXAMINER

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October 9, 2002